

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

SHANNON PHILLIPS, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:13-cv-16975

WILBUR THAXTON, II, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Before the Court is Plaintiffs' *pro se* Complaint [ECF 2] and amended Complaint [ECF 7] filed under 42 U.S.C. § 1983. By Standing Order entered April 8, 2013, and filed in this case on July 5, 2013, this action was referred to United States Magistrate Judge Dwane L. Tinsley for submission of proposed findings and a recommendation ("PF&R"). Referral of this action was later transferred to United States Magistrate Judge Cheryl A. Eifert. Magistrate Judge Eifert filed her first PF&R [ECF 6] on August 30, 2013, recommending that this Court dismiss with prejudice Plaintiffs' Complaint [ECF 2] against Defendant Wilbur Thaxton, II. Magistrate Judge Eifert also recommended that Plaintiffs' application to proceed without prepayment of fees and costs and further proceedings on the claims against Defendant Vriendt be held in abeyance pending amendment of the Complaint per the magistrate judge's August 29, 2013, Order (ECF 5).

On September 19, 2013, Plaintiffs filed their amended Complaint (ECF 7). Magistrate Judge Eifert filed her PF&R [ECF 9] on October 25, 2013, recommending that this Court deny Plaintiffs' application to proceed without payment of fees and costs and dismiss this case with prejudice.


The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir.1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). In addition, this Court need not conduct a *de novo* review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections to the first PF&R (ECF 6) were due on September 16, 2013. Objections to the second PF&R were due November 12, 2013. To date, no objections have been filed for either PF&R.

Accordingly, the Court **ADOPTS** the first and second PF&Rs [ECF 6, 9], **DENIES** Plaintiffs' application to proceed without payment of fees and costs [ECF 1], **DISMISSES WITH PREJUDICE** Plaintiffs' Complaint [ECF 2] and amended Complaint [ECF 7], and **DIRECTS** the Court remove this case from the Court's Docket.

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: April 18, 2014



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE